

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Charlie Muna Cabrera,

Case No.: 2:20-cv-01573

Petitioner,

## **Order Dismissing Second or Successive Petition for Writ of Habeas Corpus**

V.

State of Nevada, et al.,

## Respondents.

[ECF No. 1-1]

This is a habeas corpus action under 28 U.S.C. § 2254. I have reviewed the petition Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. I s the action because petitioner Charlie Muna Cabrera has submitted an unauthorized l or successive habeas corpus petition.

Cabrera alleges that he was convicted in the Eighth Judicial District Court of the State of  
a, Case No. C-11-271634-1, of two counts of lewdness with a child under the age of 14.  
ra previously challenged his custody under the same state-court judgment of conviction in  
ourt.<sup>1</sup> The court dismissed that action as untimely under 28 U.S.C. § 2244(d)(1) and denied  
ificate of appealability. Cabrera appealed, and the Ninth Circuit denied a certificate of  
ability.

The prior case, *Cabrera v. Neven*, makes the current petition a second or successive petition, subject to the restrictions of 28 U.S.C. § 2244(b).<sup>2</sup> Before filing a second or successive petition in this court, a petitioner first must obtain authorization from the Ninth Circuit.<sup>3</sup>

<sup>1</sup> *Cabrera v. Neven*, Case No. 2:14-cv-02162-JCM-GWF.

23 <sup>2</sup> *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009).

<sup>3</sup> 28 U.S.C. § 2244(b)(3).

1 Cabrera understands this problem and he applied to the Ninth Circuit for authorization to  
2 file a second or successive petition.<sup>4</sup> On November 12, 2020, the Ninth Circuit denied Cabrera's  
3 application. It would be futile to give Cabrera the opportunity to show cause by providing the  
4 Ninth Circuit's authorization or to refer this matter to the Ninth Circuit under Circuit Rule 22-3.  
5 The Ninth Circuit denied authorization to file this petition less than a month ago, and nothing  
6 indicates that that court would reach a different conclusion today. I will dismiss this action.

7 Cabrera also filed a motion for appointment of counsel. I deny that motion because I am  
8 dismissing the action under § 2244(b).

9 Reasonable jurists would not find my determination to be debatable or wrong, and I will  
10 not issue a certificate of appealability.

11 I THEREFORE ORDER the clerk of the court to file the petition for a writ of habeas  
12 corpus and the motion for appointment of counsel, currently in the docket at ECF No. 1-1 and 1-  
13 2, respectively.

14 I FURTHER ORDER that the motion for appointment of counsel is **DENIED**.

15 I FURTHER ORDER the clerk to add Aaron Ford, Attorney General for the State of  
16 Nevada, as counsel for the respondents.

17 I FURTHER ORDER the clerk to provide copies of this order and all prior filings to the  
18 Attorney General in a manner consistent with the clerk's current practice, such as regeneration of  
19 notices of electronic filing. No response by the Attorney General is necessary.

20 I FURTHER ORDER that this action is **DISMISSED** as an unauthorized second or  
21 successive habeas corpus action under 28 U.S.C. § 2244(b). The clerk of the court is directed to  
22 enter judgment accordingly and to close this action.

23  
4 *Cabrera v. Johnson*, Case No. 20-72521. See also ECF No. 4.

1 I FURTHER ORDER that a certificate of appealability will not issue.  
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3 DATED this 9th day of December, 2020.  
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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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